

EDWARD D. FAGAN ESQ.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILEDOne Penn Plaza, 23rd Floor, NY, NY 10001, Tel: 212-692-7225 6/26/08Email: faganlawintl@aim.com (Official Email Address for Court Documents)Email: faganlaw.teachers@gmail.com (Email Address for Teachers4Action Case)

Fax: 212, 805-7933

June 26, 2008

Honorable Andrew J. Peck, USMJ
United States District Court
Southern District of New York
500 Pearl Street, Chambers
New York, NY 10007

MEMO ENDORSED - p2

Re: Teachers4Action et al v. Bloomberg et al, 08-cv-548 (VM)(AJP)

Honorable Judge Peck:

I write to request that the Court "So Order" this letter directing Defendant New York City Department of Education ("DOE") to provide - by 5 pm tomorrow June 27, 2008 - the hard copies of the document(s) embodied in Your Honor's June 19th Order (Doc. # 67).

Prior to seeking Court intervention, I tried, without success, to resolve the issues with counsel for Defendant DOE. [See email exchanges on June 20th (Exhibits 1, 2 & 3), reminder emails and exchange on June 23rd (Exhibit 4, 5 & 6) and reminder email on June 24th (Exhibit 7)].

As of the writing of this letter, I have yet to receive the hard copy of the document(s) or confirmation of when I can pick up the hard copy of the document(s). The reason for insisting on the hard copy - and not an email version of the document - is that the original of another document Defendant DOE was Ordered to produce has already gone missing and cannot be located (i.e. the Original of the April 4, 2008 Alleged Fax Cover Sheet of The Anonymous Emails which was the subject of the May 22, 2008 deposition of Theresa Europe).¹

Plaintiffs pray that, after reviewing this submission and supporting exhibits, the Court "So Order" this letter and direct Defendant DOE to produce a hard copy of the subject document(s) by June 27, 2008 at 5 pm and preserve the original document(s) for later authentication.

As always, Plaintiffs thank the Court for its consideration in this regard.

Respectfully submitted,

Edward D. Fagan

¹ At the May deposition of Ms. Europe, Plaintiffs learned for the first time that the Original of The April 4, 2008 Alleged Fax Cover Sheet of The Alleged Anonymous Emails could not be produced. The explanation given was that Ms. Europe emailed the original document to DOE counsel and after that point neither DOE, nor DOE counsel could locate or produce the Original, as it allegedly existed on April 4, 2008. The original document was allegedly not preserved by Defendant DOE, or it was lost or it was misplaced or it could not be found or Defendant DOE could not identify with a certainty which document it is or which is/was the alleged original. This spoliation or discovery related issues will be the subject of an upcoming Motion. It is included in this letter to support Plaintiffs' insistence that the hard copy of the actual original document(s) as identified by Ms. Europe on May 5, 2008 at the Balyreva 3020a hearing that has/have been Ordered to be produced are in fact produced to avoid a similar problem related to evidence preservation and authentication of evidence. And, it is this evidence that is part of Defendant DOE's claims Plaintiffs are mistaken about their beliefs as to what their due process rights are in 3020a hearings and or that to the extent there is any possible misunderstanding between language in Article 21-g of the Collective Bargaining Agreement and requirements of NYS Ed. Law 3020a or 8 NYCRR R2-1 et seq., such "misunderstanding", if any, was expressly clarified by Defendant UFT in the document(s) which Defendant DOE has been ordered, but has yet, to produce.

EDWARD D. FAGAN ESQ.

Hon. Andrew J. Peck Esq. - June 26, 2008 Letter - Page 2

Re: Teachers4Action et al v. Bloomberg et al, 08-CV-548 (VM)(AJP)

EDF/lst

attachments

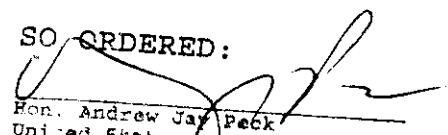
Cc: Blanche Greenfield Esq. - For NYC Defendants - Fax (212) 788-8877

Charles Mcardler Esq. - For Defendants UFT, Weingarten & Combier - Fax (212) 806-6006

MEMO ENDORSED 6/26/08

The pettiness shown by both HS' counsel and DOE counsel - this letter and the attached emails - and the legal profession's lack of concern for the public's interest. If another applicant's words or actions are or have caused are likely to be sanctioned. This is not kindergarten and counsel are to cooperate - and not throw up the Court's time with whining over trivia.

SO ORDERED:


Hon. Andrew Jay Peck
United States Magistrate Judge

cc: Mr. Hilbert
CERT J. J. Markers

BY FAX

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: June 26, 2008

Total Number of Pages: 3

TO	FAX NUMBER
Edward D. Fagan, Esq.	646-304-6446 or 646-417-5558
Blanche Greenfield, Esq.	212-788-8877
Charles G. Moerdler, Esq.	212-806-2647
Dina Kolker, Esq.	212-806-6006

TRANSCRIPTION:

MEMO ENDORSED 6/26/08

The pettiness shown by both plaintiffs' counsel and DOE counsel in this letter and the attached emails is why the legal profession is held in such low regard. Work this out. If another application is made on this issue, one or both counsel are likely to be sanctioned. This is not kindergarten and counsel are to cooperate – and not take up the Court's time with whining over trivia.

Copy to: Judge Victor Marrero